IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.632 OF 1991

Sitaram Govind Nikam,
R/o.Parkhandale, Taluka: ...Petitioner
Panhala, District Kolhapur. (Applicant)

Versus

1.Kum.Rupali D/o Vijaysing
Sadashiv Benadikar, M.G.
Smt.Chandralekha Vijaysing Benadikar

2.Smt.Sitadevi w/o Ramchandra Sarnobat

3.Kum.Nina Ramchandra Sarnobat

4.Kum Jaya Ramchandra Sarnobat

Nos.2 to 4 heirs and legal
representatives of Ramchandra
Dadasaheb Sarnobat, represented
through their Vat Mukhtyar
Shri Sopan Yeshwat Thorabole,

Nos.1 to 4 R/o.520, 'E' Ward,
Shahupuri, Koklhapur. ...Respondents

.....

Mrs.S.S.Deshpande with Mr.B.P.Apte for Petitioner.

Mr.A.Y.Sakhare with Mr.P.D.Dalvi for

Respondents 1 to 4.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 10, 2004.

P.C.

1. This Petition takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal at Camp Kolhapur in Revision Application No.MRT.KP.164 of 1987 dated April 24, 1990. It is not necessary to burden this Order with all the events and the contentions that have been raised before me. Suffice it to observe that the case of the Petitioner before the Appellate Court was that the landlords/Respondents 1 and 2 were a joint family, and no partition had taken place between them, for which reason, Section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') has no application to the fact situation of the present case and it would necessarily follow that the Petitioner tenant had become deemed purchaser on the tillers' day i.e. 1st April 1957. Although this grievance was specifically made before the Appellate Authority, the Appellate Authority has dealt with the same in the following manner :

> "The advocate for the appellant also argued that the two landlords were a joint family and partition had not occurred between them and that Sec.32-F(i)(a) was not applicable. But the appellant has not appealed against the previous order of the ALT postponing the 32-G proceeding. However the advocate for the respondents has conceded that only 2/3 portion was held by resp-1 (the widow). The remaining 1/3 portion was owned by respondent-2. For this portion 32-G will be applicable. The ALT has omitted to mention this in his judgment. Hence the ALT's order should be modified".

2. In other words, the Appellate Authority which was the final fact finding authority, has not considered the contention which goes to the root of the matter. Indeed, my attention is invited by Mr.Sakhare for the Respondents 1 to 4 to the Judgment of the Revisional Authority, in particular, Para No.5 thereof, to contend that the factual matrix in relation to the said aspect has been analysed by the Revisional Authority and the Revisional Authority has found that Jamanabai, the widow of Bapuso Sarnobat was exclusive owner of the two-third property and the remaining one-third was owned by Dadasaheb, father of Ramchandra/Opponent No.2. Since the Appellate Authority had failed to examine the issue of fact, although it was a final fact finding authority, that would not permit the

Revisional Authority to reappreciate the evidence even if the same was available on record, to proceed to record finding of fact for the first time, one way or the other. The Tribunal, in my opinion, ought to have relegated the parties before the Appellate Authority for adjudication of the said issue as to whether the Suit land was joint family property on or before the tillers' day and there was no partition effected between the family members of the landlords before that date. To my mind, instead of setting aside the impugned order for this limited reason, the appropriate course in the interest of justice, would be to invite finding of the Appellate Authority, the Assistant Collector, Shahuwadi Division, Kolhapur on the aforesaid issue on receipt of which this Court can examine the matter further on its own merits. The record and proceeding received by this Court will have to be returned to the Appellate Authority, so that, the Appellate Authority can examine the relevant record and also after permitting the parties to adduce further evidence in relation to the said issue, proceed to return a clear finding on the said issue. The Appellate Authority shall

return the finding to this Court within six weeks from the receipt of writ of this Court. The parties shall extend necessary co-operation to enable the

Appellate Authority to return the finding within the specified period. All questions in that behalf are left open. Office to return the record expeditiously.

3. Post this Petition after six weeks.

A.M.KHANWILKAR, J.